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In re Application of  
WEDLER et al. :  
Application No.: 10/588,979 : DECISION  
PCT No.: PCT/DE2004/002678 :  
Int. Filing Date: 07 December 2004 :  
Priority Date: 10 February 2004 :  
Attorney's Docket No.: HKH-34PCT :  
For: RESPIRATORY DEVICE AND METHOD FOR  
CONTROLLING A RESPIRATORY DEVICE :  
:

This decision is in response to applicants' "PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION," which has properly been treated as a petition under 37 CFR 1.181, filed in the United States Patent and Trademark Office (USPTO) on 29 August 2008.

**BACKGROUND**

On 07 December 2004, applicant filed international application PCT/DE2004/002678, which designated the United States and claimed a priority date of 10 February 2004. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 18 August 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 10 August 2006.

On 10 August 2006, applicant filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 30 April 2007, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) was required.

On 20 June 2008, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT

(Form PCT/DO/EO/909) indicating that the application was abandoned as to the United States of America for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 30 April 2007 within the time period set therein.

On 29 August 2008, applicants submitted the instant "PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION."

### DISCUSSION

If applicants can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1) and (2) have been met. As to item (3), MPEP § 711.03(c), para. I.A. states that a "copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action." Such a docket record has been provided. Thus, item (3) has been met as well.

### CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

The NOTIFICATION OF MISSING REQUIREMENTS mailed 30 April 2007 is VACATED.

The NOTIFICATION OF ABANDONMENT mailed 20 June 2008 is VACATED.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application including preparing

and mailing a NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) requiring an executed oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b).

/Daniel Stemmer/

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